

Jon Givens

From: Jon Givens
Sent: Tuesday, January 16, 2007 3:30 PM
To: "McIntosh, Scott"
Cc: 'john.dienelt@dlapiper.com'; Sherri Lindfors; 'paul.gallagher@avisbudget.com'; AK Rent A Car
Subject: RE: Proposed Joint Memorandum

Scott

I understood from your lack of response to my 1/5/07 email of 4:07pm, my secretary's email of 4:07pm and my email of 4:44pm that I had authority to file the joint memorandum regarding docket 297. When you did respond after the memorandum was filed at the close of business for the court and our office, I emailed you to determine if there was anything further which needed to be done with the filing at 5:04pm and 5:36pm to which you never responded. Instead, without contacting me to make any effort to do a notice or errata you filed a motion for sanctions on the following business day. Considering that after the 12/19/06 filing of docket 297 you never provided me a single word of text or edit to the joint reply until noon the day the filing was due (1/5/07) and at 2pm on the day the filing was due, I suspect it is your side who the court will sanction. You gentlemen knew I was out of state on vacation and you waited till the afternoon of the filing deadline to get me anything, then disappear in the final hour the filing has to get done, and then have the nerve to move for sanctions without making any effort to contact me to correct any perceived problem with the filing. Your conduct was not that of a professional. Now you have filed docket 305 asking the court to tell you what you already know you should have done in the first place, contact me to correct any problem with the filing. Lets restart the clock when you disappeared. At that point you were doing your final review of the joint memorandum. Although you never responded with a single proposed modification, please do so. You have the last version (filed with the court) so send me any proposed edits you would like to make tomorrow. I can then review them and if they are agreeable we can file an errata, if appropriate. As to your complaint about the word 'joint', that has already been changed by errata, even though the filing in point of fact was jointly authored as you drafted pages of the document which I did not edit at all. You also complained that the document was over length, but you are simply wrong as the order said the memorandum was limited to 10 pages and as filed it was 7 pages. Just as with pleadings the local rule page limits apply to the pleading and not exhibits. The exhibits we filed on our position were appropriate. You also complained in your motion for sanctions that I did what you asked and removed language on who owns Alaska Rent a Car from the joint portion of the memo. I then put the language into our sides organizational chart. The statement is factually true as to the corporate ownership so what is your complaint? I dont get to edit your chart and you dont edit ours. So what other changes would you like to make to the joint filing? This can be a quick process as we were 1 hour away from filing when you disappeared so lets re start the clock and you provide tomorrow any edits of substance to the joint filing you would have made or proposed between 4:07 pm and the 5pm close of business. This is what you should have done on 1/5 or 1/8, rather than moving for sanctions.

As an aside I am requesting you withdraw the motion for sanctions as we will suggest to the court it is your side whom should be sanctioned for filing a frivolous sanction motion without even conferring with counsel or trying to correct the situation without court involvement. Just so I am clear you should not infer from anything in this email that I did anything inappropriate in filing the joint memorandum, as I believe everything we did was appropriate.

-----Original Message-----

From: Jon Givens
To: 'McIntosh, Scott '
Sent: 1/5/07 5:35 PM
Subject: RE: Proposed Joint Memorandum

What are you referring to?

-----Original Message-----

EXHIBIT 3
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From: McIntosh, Scott
To: Jon Givens
Sent: 01/05/2007 17:15
Subject: RE: Proposed Joint Memorandum

No!

From: Jon Givens [mailto:JGivens@bankston.to]
Sent: Friday, January 05, 2007 9:13 PM
To: McIntosh, Scott
Subject: RE: Proposed Joint Memorandum

everything ok?

-----Original Message-----

From: McIntosh, Scott
To: Jon Givens
Sent: 01/05/2007 16:58
Subject: Re: Proposed Joint Memorandum

I had left the office by the time you sent. Am trying to do a quick review now.

Scott McIntosh

Sent from my BlackBerry Wireless Handheld (www.BlackBerry.net)

-----Original Message-----

From: Jon Givens <JGivens@bankston.to>
To: McIntosh, Scott
Sent: Fri Jan 05 20:44:14 2007
Subject: RE: Proposed Joint Memorandum

I assume we can simply file the joint reply under my signature.

-----Original Message-----

From: McIntosh, Scott
To: Jon Givens
Cc: Jana Vanderbrink; Dienelt, John
Sent: 01/05/2007 15:36
Subject: Proposed Joint Memorandum

Is the revised draft almost ready for our review?

<<http://www.dlapiper.com/>> <<http://www.dlapiper.com/>> <<http://www.dlapiper.com/>> > >
Scott McIntosh

DLA Piper US LLP
1200 Nineteenth Street, NW
Washington, DC 20036-2412
202.861.3979 T
202.689.7417 F
scott.mcintosh@dlapiper.com <mailto:scott.mcintosh@dlapiper.com>
<mailto:scott.mcintosh@dlapiper.com <mailto:scott.mcintosh@dlapiper.com>
> >
www.dlapiper.com <<http://www.dlapiper.com/>> <<http://www.dlapiper.com/>>
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Thank you. _____

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Thank you. _____

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Thank you. _____

Jon Givens

From: Jon Givens
Sent: Thursday, January 18, 2007 12:34 PM
To: 'McIntosh, Scott'
Cc: 'Dienelt, John'; 'htrickey@jdolaw.com'; 'dfvallentine@jdolaw.com'; 'msinger@jdolaw.com'; Jana Vanderbrink; Kevin Williams; Jon Givens
Subject: RE: Letter Dated January 18, 2007

Scott

As I am out of State I will only respond briefly. First, you accuse me of trying to create a record of blame and then proceed to write a letter trying to blame me. First you demand that before you will provide any proposed edits to the joint memorandum I throw myself on the perverbial sword admit blame and withdraw the jointly drafted memorandum. I was ordered to file a memorandum and did so with every piece of input I had from you by the filing deadline. Your demand is simply unreasonable. Nonetheless, I will again extend the offer that if you have any edits, changes or corrections you wish to make to the memorandum, then send me a proposed errata. It has been almost 2 weeks since the filing and I do not have any changes from you.

As to your blame game, I contacted you because you and I were the only people who were working on the filing, and at 3:37 pm you emailed that you were waiting for the next draft, which was sent to you a half hour later. As for a phone call, I had no reason to know you disappeared as you did not email me or call me to let me know. Fundamentally you did not get me any written content or edits till the day of the filing. I emailed that I would file the jointly authored document under my signature unless I heard otherwise and I did not. My office and the court close our business days at 5pm, even on Friday, and you knew I was out of state. I did not have any further edits from you by the time my secretary hit the send button for the filing at 4:58 pm and to date I have no edits from you. As for your statement the filing was materially different than the 4:07pm draft, I dont know what you are referring to, as its essentially identical. Upon your untimely sending the section of the memorandum you drafted, I then needed time to draft responses and modify my section. I gave you my section 2 days before the filing and gave you substantially more time to respond to my arguments than you gave me. I will also note you had a deadline to get me your inserts and edits of 1/4/07 in time to actually file on 1/4/07, but you ignored that deadline and created the problem by waiting till the afternoon of the filing to get me materials.

-----Original Message-----

From: McIntosh, Scott
To: Jon Givens
Cc: Dienelt, John; htrickey@jdolaw.com; dfvallentine@jdolaw.com; msinger@jdolaw.com; McIntosh, Scott
Sent: 1/18/07 11:46 AM
Subject: Letter Dated January 18, 2007

Jon,

Please see attached letter in response to your email dated January 16, 2007.

Scott

Scott McIntosh

DLA Piper US LLP
1200 Nineteenth Street, NW
Washington, DC 20036-2412

202.861.3979 T
202.689.7417 F

EXHIBIT 3
Page 4 of 5

scott.mcintosh@dlapiper.com

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Thank you. _____

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